



San Diego City Attorney **CASEY GWINN**

NEWS RELEASE

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SAN DIEGO CITY ATTORNEY CASEY GWINN Responds to U.S. Attorney's Indictments

Many legal issues arise from the indictments announced today. My staff has researched these issues in anticipation of this day. The following questions have also been raised by the media:

(1) What is the legal effect of an indictment of a Councilmember? (2) What is the legal effect of a criminal conviction of a Councilmember? and (3) What is the process and timing for filling a Council vacancy which results from a resignation or conviction of a Councilmember as a result of the investigation?

1. Indictment of a Councilmember

In order for an official who has been charged with a criminal offense to be disqualified from holding office, the official must be convicted of the offense. Therefore, an indictment alone does not result in disqualification from holding office. An official who has been indicted may continue to hold office until such time as the official is convicted of the offense, and the court has entered a judgment. An indictment may create conflicts for an indicted councilmember in voting on city business in certain matters. The City Attorney will need to evaluate potential conflicts on an item by item basis; including potential disqualification issues involving the Police Department, given the Police Department's involvement in the investigation from its inception.

2. Criminal Conviction of a Councilmember

In addition to any felony, or an offense involving a violation of official duties, pursuant to California Government Code section 1770(h), a conviction of any of the following offenses results in the disqualification of a public official from holding office, pursuant to the listed authorities:

(More)



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NEWS RELEASE

Page 2

- ◆ Bribery (Cal. Const. art. VII, § 8; Cal. Penal Code §§ 68, 165)
- ◆ Forgery (Cal. Const. art. VII, § 8)
- ◆ Perjury (Cal. Const. art. VII, § 8)
- ◆ Presenting false claim to a public agency (Cal. Penal Code § 72; 75 Op. Cal. Att’y Gen. 64 (1992))
- ◆ Acceptance of gratuity or reward for an appointment (Cal. Penal Code § 74)
- ◆ Inhumanity to prisoners (Cal. Penal Code § 147)
- ◆ Embezzlement of public funds and falsification of accounts (Cal. Penal Code § 424)
- ◆ Self dealing in public contracts (Cal. Gov’t Code § 1097)
- ◆ Racketeering, extortion, conspiracy (*Lubin v. Wilson*, 232 Cal. App. 3d 1422 (1991))

An official is deemed to have been convicted of an offense, for purposes of disqualification from office, when a trial court judgment is entered, including a judgment by the trial court either sentencing the official or otherwise upholding and implementing the plea, verdict or finding. Cal. Gov’t Code § 1770(h); *Helena Rubenstein Intl. v. Younger*, 71 Cal. App. 3d 406 (1977). Additionally, a plea of nolo contendere to a disqualifying offense constitutes a conviction for purposes of disqualification, and once the plea has been entered by the court, the official is immediately disqualified from office. 75 Op. Cal. Att’y Gen. 64 (1992). Appealing a conviction for a disqualifying offense does not stay or delay the disqualification. *McKannay v. Horton*, 15 Cal. 3d 711 (1907); 57 Op. Cal. Att’y Gen. 374 (1974).

3. Process for Filling a Council Vacancy

The process for filling City Council vacancies is set forth in San Diego Charter section 12(h) and in San Diego Municipal Code sections 27.0701–27.0907.

(More)



San Diego City Attorney **CASEY GWINN**

NEWS RELEASE

Page 3

Effective Date of the Vacancy.

In the case of a resignation, the timing of the vacancy is based upon the date specified in the written letter of resignation, or, if there is no date certain specified, upon the date of receipt of the letter by the City Clerk. San Diego Municipal Code § 27.0703(a). In the case of a conviction for a disqualifying offense, the vacancy would occur upon entry of judgment by the court after a verdict or plea. Cal.Gov't Code 1770 (h).

Vacancy with More than One Year Left in Office

If a Council vacancy occurs with more than one year left in the Councilmember's term, the vacancy will be filled by election, to be held within 90 days of the vacancy. San Diego Charter § 12(h)(1)(B); San Diego Municipal Code § 27.0902. Whether the election will be a special election, or whether the election will be held in conjunction with a regular municipal or statewide election depends on how much time remains before the next scheduled regular election. If there is a regular municipal or statewide election to be held within 180 days of the vacancy, the Council may consolidate the special election with that regular election. San Diego Charter § 12(h)(1)(B); San Diego Municipal Code § 27.0902.

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